

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922.

**No. 693.**

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INTERNATIONAL MERCANTILE MARINE COMPANY,  
APPELLANT,

vs.

H. C. STUART, ACTING COLLECTOR OF CUSTOMS FOR THE  
PORT OF NEW YORK; RALPH A. DAY, FEDERAL PRO-  
HIBITION DIRECTOR FOR THE STATE OF NEW YORK;  
JOHN D. APPLEBY, CHIEF ZONE OFFICER, *ET AL.*

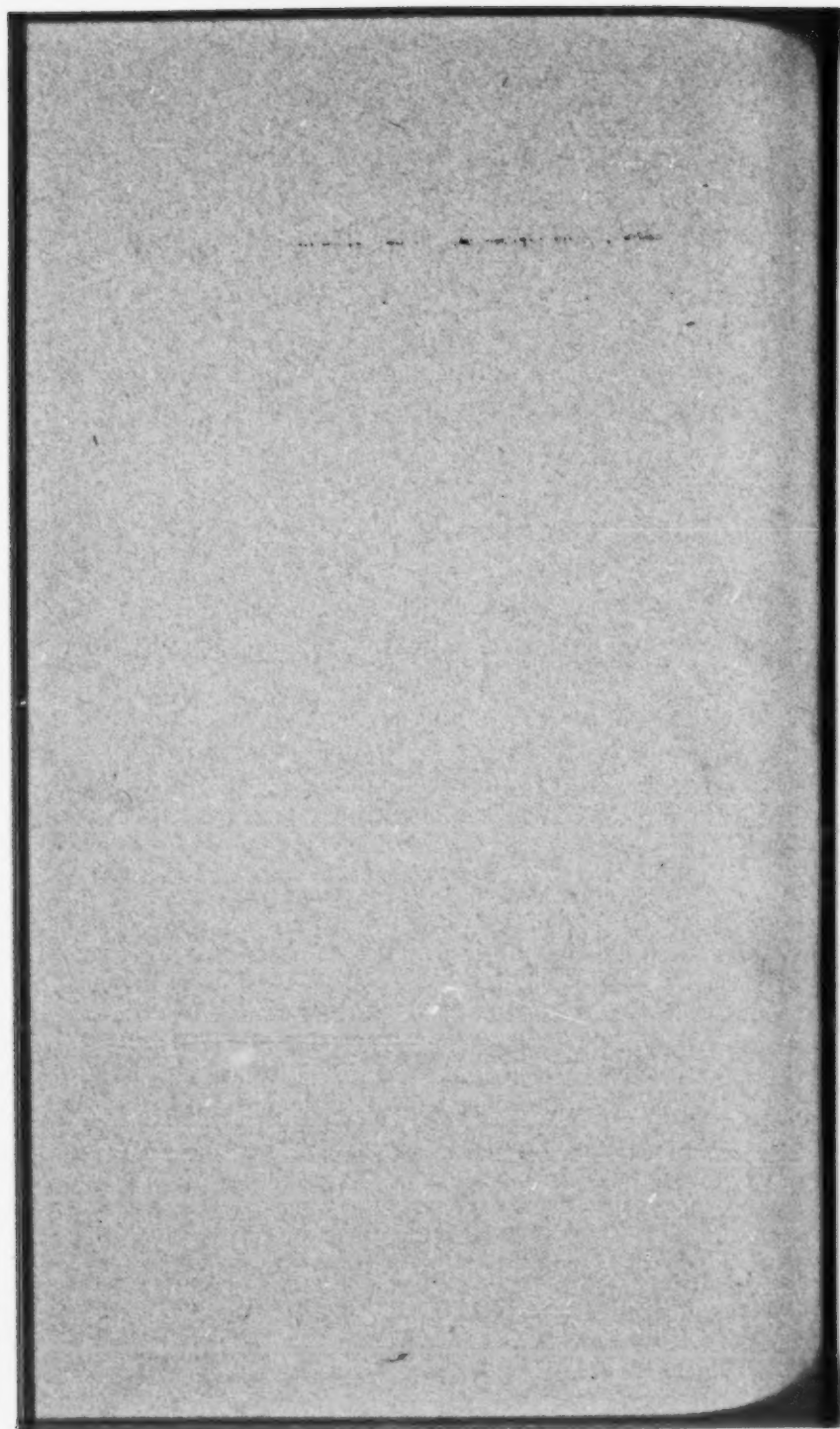
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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE SOUTHERN DISTRICT OF NEW YORK.

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FILED NOVEMBER 10, 1922.

**(29,243)**



(29,243)

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*vs.*

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1 In the District Court of the United States, Southern District of New York.

In Equity.

INTERNATIONAL MERCANTILE MARINE COMPANY, Complainant,  
against

H. C. STUART, Acting Collector of Customs for the Port of New York; Ralph A. Day, Federal Prohibition Director for the State of New York; John D. Appleby, Chief Zone Officer, and William Hayward, United States Attorney for the Southern District of New York.

*Bill of Complaint.*

To the Honorable the Judges of the District Court of the United States for the Southern District of New York, in Equity:

The complainant International Mercantile Marine Company, a corporation, brings this its bill of complaint against the above-named defendants, and respectfully shows unto this Honorable Court as follows:

First. The complainant International Mercantile Marine Company is a corporation duly organized and existing under the laws of the State of New Jersey, and is and at all the times hereinafter mentioned, was the owner of the American steamships St. Paul, Finland and Kroonland.

Second. The complainant is informed and verily believes, and therefore alleges on information and belief, that the defendant H. C. Stuart is a citizen and resident of the State of New York and is Acting Collector of Customs for the Port of New York, and  
2 that the said defendant is by law charged with certain duties in connection with the enforcement of the terms and provisions of the Act of Congress and regulations and decisions of the Secretary of Treasury hereinbelow referred to within the Port of New York.

Third. The complainant is informed and verily believes, and therefore alleges on information and belief, that the defendant Ralph A. Day is a citizen and resident of the State of New York, and is the Federal Prohibition Director for the State of New York, and that the said defendant is by law charged with certain duties in connection with the enforcement of the terms and provisions of the Acts of Congress and the regulations and decisions of the Secretary of Treasury hereinbelow referred to, within this District.

Fourth. The complainant is informed and verily believes, and therefore alleges on information and belief that the defendant John

D. Appleby is a citizen and resident of the State of New York and a Zone Officer for this Zone, and that the said defendant is by law charged with certain duties in connection with the enforcement of the terms and provisions of the Acts of Congress and the regulations and decisions of the Secretary of the Treasury hereinbelow referred to.

Fifth. The complainant is informed and verily believes, and therefore alleges on information and belief that the defendant William Hayward is a citizen and resident of the State of New York, and is the United States Attorney for the Southern District of New York.

3 Sixth. This is a suit of civil nature, arising under the Constitution of the United States. The matter in controversy exceeds the sum of Three thousand dollars in value, exclusive of interest and costs. The complainant is engaged in carrying on a steamship business, and has, for about twenty years, been and now is engaged in the business of transporting as common carrier, passengers and cargo for hire on the high seas, between ports of the United States and ports in Europe, and in transacting such business complainant owns, maintains and operates steamships which sail from various ports in the United States to various ports in Europe.

Seventh. The complainant further alleges that the steamships St. Paul, Finland and Kroonland are worth approximately \$2,000,000.

Eighth. For upwards of twenty years, in connection with the operation of the steamers above-mentioned, the complainant has kept, as part of the regular sea stores of said vessels, wines and other intoxicating liquors which were sold in foreign ports and on the high seas for the convenience of its passengers, many of whom are of nationalities who habitually use wines and other intoxicating liquors as a part of their regular diet.

Ninth. For many years prior to and since the adoption of the so-called National Prohibition Act of October 28, 1919, complainant has been permitted to keep intoxicating liquors as part of the sea stores of the above-named steamers, and to sell the same on the high seas and in foreign ports. Whilst on the high seas and in  
4 foreign ports, the vessels of the complainant were not territory subject to the jurisdiction of the United States within the meaning of the Eighteenth Amendment to the Constitution, or subject to the laws which have been enacted for the enforcement of the provisions of the said amendment.

Tenth. None of the intoxication liquors, so kept as sea stores, have been manufactured, sold or transported within, imported into, or exported from the United States or any territory subject to the jurisdiction of the United States.

Eleventh. Subsequent to October 28, 1919, all wines and other intoxicating liquors kept as part of the regular sea stores on the above-named vessels have been lawfully acquired in foreign ports, and since October 28, 1919, all intoxicating liquors so kept as sea

stores, have been securely locked up prior to the vessel's entering the territorial waters of the United States, and have been thereafter sealed up by the officials of the Treasury Department on arrival at Quarantine and have been kept sealed until the vessel again reached the high seas on its outward voyage. At no time have the said intoxicating liquors kept as sea stores been used by the passengers or crew whilst the vessel was within the territorial waters of the United States.

5 Twelfth. The foregoing procedure was followed in pursuance of regulations embodied in Treasury Decisions No. 38218 of December 11, 1919, and No. 38248 of January 27, 1920, copies of which are hereto annexed as Schedules A and B hereof, which were promulgated under authority vested in the Secretary of the Treasury by the National Prohibition Act.

Thirteenth. In reliance upon and under the authority of the above-mentioned Treasury decisions and the regulations promulgated in connection therewith and the procedure always followed as above-described, the complainant, in good faith, purchased in foreign ports and now has on board the steamers above-mentioned, as sea stores, sealed as required by the regulations, quantities of intoxicating liquors of a value in excess of \$3,000, on the steamers St. Paul and Finland.

Fourteenth. Under date of October 5, 1922, the Attorney General of the United States transmitted an opinion the Secretary of the Treasury and in that opinion stated that the Eighteenth Amendment to the Constitution and the National Prohibition Act applied to American ships on the high seas and in foreign ports and that the practice of selling liquors on American ships outside of the territorial waters of the United States was not permissible under the laws; and further that the sale, transportation or possession of intoxicating liquors for beverage purposes on foreign vessels while in territorial waters of the United States is prohibited by the said law.

6 Fifteenth. Subsequently the President of the United States addressed the following letter to the Secretary of the Treasury:

"Washington, Oct. 6, 1922.

"MY DEAR MR. SECRETARY:

I have asked the Attorney General to place in your hands his ruling relating to the application of the Eighteenth Amendment and the Volstead Act to the service and the transportation of intoxicating liquors on American ships at sea and the transportation of intoxicating liquors on all vessels within American waters. The ruling, you will note, holds all transportation in American waters to be contrary to a recent decision of the Supreme Court, and transportation and traffic on American vessels to be wholly contrary to law. I have directed the Chairman of the United States Shipping Board to order immediate observance of the law on all Government vessels, and desire you to give like notice to the masters of all privately owned ships operating under the American flag.

You will note that the ruling holds the possession or transportation of all intoxicating liquors by foreign ships in American waters to be contrary to the decision of the court. You will therefore proceed to the formulation of regulations for the enforcement of the law, and such notice to the agents of foreign shipping lines touching American ports or docking therein as becomes the circumstances and

7

commits us to full enforcement of the law.

"Very truly yours,

"WARREN G. HARDING.

"Washington, October 7, 1922.

Hon. A. W. Mellon,  
Secretary of the Treasury,  
Washington, D. C.

"MY DEAR MR. SECRETARY:

Supplementing my letter of instruction of October 6, relating to the enforcement of the Eighteenth Amendment and the prohibition enforcement act as applied to carriers at sea, you will please direct United States customs officials to give notice to all shipping lines that, pending the formulation of regulations, the enforcement of the prohibition of transportation and ship stores will not be practicable in the case of foreign vessels leaving their home ports or American vessels leaving foreign ports on or before October 14, 1922. Any earlier attempt at enforcement in the absence of due notice and ample regulations would be inconsistent with just dealing and have a tendency to disrupt needlessly the ways of commerce.

"This delay in full enforcement does not apply to the sale of intoxicating liquors on vessels sailing under the American flag.

"Very truly yours,

"WARREN G. HARDING.

8

Hon. A. W. Mellon,  
Secretary of the Treasury,  
Washington, D. C."

Sixteenth. The steamship St. Paul with a quantity of intoxicating liquors on board as sea stores lawfully acquired in foreign ports, in reliance on and securely locked up and sealed in accordance with the Treasury decisions and regulations hereinbefore set forth, is now in the Port of New York, lying at Pier 62, North River.

Seventeenth. The Steamship Finland with a quantity of intoxicating liquors on board as sea stores, lawfully acquired in foreign ports in reliance on, and securely locked up and sealed in accordance with the Treasury decisions and regulations above set forth, is now in the Port of New York and is scheduled to sail from the Port of New York on October 14, 1922.

Eighteenth. The steamship Kroonland is now in the Port of Antwerp, Belgium, scheduled to sail from New York on October 12, 1922.



Nineteenth. The intoxicating liquors above-mentioned, forming part of the regular sea stores of the steamships St. Paul and Finland, now lying in the Port of New York, were legally acquired before the complainant had received any notice or intimation from the Government authorities that there was to be a departure from the practice outlined in the Treasury decisions and regulations above set forth with which complainant has always fully complied in all respects.

9 Twentieth. On October 10, 1922, the United States Custom officials, regularly assigned to piers leased and controlled by the complainant in the City of New York, informed John Watson, General Wharf Superintendent for the complainant at the Port of New York, that they had received instructions issued by the authority of the Acting Collector of Customs at the Port of New York to the effect that prohibition enforcement agents of the United States Government were about to seize the intoxicating liquors kept as sea stores on the steamship St. Paul, and that they were directed to lend all assistance to these prohibition enforcement agents in connection with such threatened seizure.

Twenty-first. Complainant verily believes that acting under orders of the Secretary of the Treasury, and of the Federal Prohibition Director of the State of New York, the prohibition enforcement agents and other Government agents will seize or attempt to seize intoxicating liquors now sealed as sea stores aboard the steamship Finland and also on the steamship Kroonland when she arrives at the Port of New York.

Twenty-second. Complainant is advised by counsel and verily believes that the opinion of the Attorney General of the United States is erroneous and that the Eighteenth Amendment and the National Prohibition Act do not apply to intoxicating liquors legally acquired in foreign ports in good faith, kept as sea stores and sealed on arrival as aforesaid in pursuance of the Treasury decisions and regulations above referred to, and that the threatened actions of the  
10 Secretary of the Treasury, the Federal Prohibition Director of the State of New York and the Acting Collector of Customs of the Port of New York, prohibition enforcement agents and other United States Government agents in seizing or attempting to seize any of the intoxicating liquors above-mentioned, carried as sea stores, are improper, unauthorized, void and without warrant of law and interfere with the constitutional rights of the complainant.

Twenty-third. The intoxicating liquors aboard the above-mentioned steamers are of great value and complainant verily believes that if these intoxicating liquors, kept as sea stores, are seized and taken into the possession of minor officials of the United States Government, that said liquors will be destroyed or wasted. The complainant is entitled, pending the final decision of this cause, to have the said sea stores of said steamers, remain intact so that if case the decision should be in the complainant's favor, its property will not have disappeared, or if the decision shall be against it, it may be

able to secure the necessary permits to take the said sea stores out of the United States in order to dispose of them without loss of property lawfully acquired and possessed by it in reliance, and under the authority of the aforesaid regulations and decisions of the Treasury Department. If the said sea stores are seized, the complainant will be deprived of the lawful possession of them, and of the right and opportunity to sell the said sea stores on the high seas and in foreign ports.

11      Twenty-fourth. The complainant alleges, on information and belief, that the Secretary of the Treasury or the Commissioner of Internal Revenue, under authority of the Secretary of the Treasury, has not yet issued any decision or promulgated any regulations contrary to the Treasury decisions above quoted, and on information and belief, said Treasury decisions and regulations remain outstanding.

Twenty-fifth. On information and belief, the complainant alleges that such decisions and regulations are now in the course of preparation by the Treasury Department in accordance with the opinion of the Attorney General of the United States above referred to, and that when they are issued, there will be an attempt made to enforce the new rulings by the Acting Collector of the Port of New York, the Federal Prohibition Director of New York State, the United States Attorney for the Southern District of New York, and other officers and agents of the Government, and the aforesaid sea stores of the complainant will be seized to its immediate and irreparable damage.

Twenty-sixth. The complainant has no adequate remedy at law and unless an injunction is granted against the defendants, the complainant will be immediately and irreparably damaged.

Wherefore, the complainant prays that the Court will decree

1. That a writ of subpoena be issued herein directed to the defendants above-named, demanding that each of them on a day named appear and answer the complaint herein, but not under oath.  
12      the oath being hereby expressly waived.

2. That said defendants, their agents, servants, subordinates and employes, and each and every one of them, be enjoined and restrained from enforcing or attempting to enforce, or causing to be enforced in any manner whatsoever, against the complainant, its officers, agents, servants and employes or any of them, or the said steamships, any of the seizures, pains, forfeitures and penalties provided in and by the aforesaid acts of Congress or any laws or regulations of the Secretary of the Treasury.

3. That said defendants, their agents, servants, subordinates and employes, and each and every one of them, be enjoined and restrained from arresting and prosecuting the complainant, its officers, agents, servants or employes, or any of them, for or on account of

the alleged violations by them or any of them, of the regulations or Acts of Congress on the ground or claim of having intoxicating liquors on board the said vessels, as sea stores, while in the Port of New York.

4. That the said defendants, their agents, servants, subordinates and employes, and each and every one of them be enjoined and restrained from refusing to issue to the complainants and/or its said steamers, permits for clearance from the port of New York, or in any way interfering with the arrival or departure of the steamers with liquor on board, sealed as sea stores.

5. That the said defendants, their agents, servants, subordinates and employes, and each and every one of them, be enjoined and restrained from seizing, molesting or otherwise interfering with the complainants in the peaceful possession of said intoxicating liquors on board the aforesaid vessels, as part of their sea stores.

6. That the defendants, their agents, servants, subordinates and employes, be restrained and enjoined from enforcing against the complainant and/or its steamers, any of the pains, penalties, seizures or forfeitures provided for in the aforesaid Acts of Congress or any laws and regulations of the Secretary of the Treasury, by reason of any sale of liquor carried as sea stores which may be made on the high seas or in foreign ports.

7. That the complainant be granted a restraining order and preliminary injunction pending final hearing and decision of this cause, whereby the defendants, their agents, servants, subordinates and employes, and each and every one of them, shall be enjoined and restrained, as heretofore prayed, and that upon final hearing of this cause, said injunction be made perpetual.

8. That a decree may be entered herein in favor of the complainant against the defendants aforesaid, and

9. That the complainant have such other and further relief as it may be entitled to receive and the justice of the cause may require.

KIRLIN, WOOLSEY, CAMPBELL, HICKOX &  
KEATING,

*Solicitors for Complainant.*

Office and Post Office Address, 27 William Street, Borough of Manhattan, New York City.

STATE OF NEW YORK,  
County of New York, ss:

On the 11th day of October, 1922, before the undersigned, notary public duly commissioned and sworn, appeared J. H. Thomas, who being duly sworn, deposes and says that he is Vice President of the complainant in the above-entitled suit; that the foregoing bill of

complaint is true except as to the matters therein stated to be alleged on information and belief and as to those matters he believes it to be true. The reason that this verification is not made by the complainant itself is that it is a body corporate.

J. H. THOMAS.

Sworn to before me this 11th day of October, 1922.

C. D. SMITH,

*Notary Public, West Co., N. Y.*

Cert. filed in N. Y. County.

Clerk's No. 188. Reg. No. 4310.

Commission expires Mar. 30, 1924.

16

# SCHEDULE A.

(Copy.)

(T. D. 38218.)

Sea Stores—Liquors.

Liquors properly listed as sea stores should be kept under seal while vessels are in port. Excessive or surplus quantities should be seized and forfeited.—Articles 106 and 107 of the Customs Regulations of 1915 as amended.

Treasury Department, December 11, 1919.

To Collectors of Customs and Others Concerned:

All liquors which are prohibited importation, but which are properly listed as sea stores on vessels arriving in ports of the United States, should be placed under seal by the boarding officer and kept sealed during the entire time of the vessel's stay in port, no part thereof to be removed from under seal for use by the crew at meals or for any other purpose.

Excessive or surplus liquor stores are no longer dutiable, being prohibited importation, but are subject to seizure and forfeiture.

Liquors properly carried as sea stores may be returned to a foreign port on the vessel's changing from the foreign to the coasting trade, or may be transferred under supervision of the customs officers from a vessel in foreign trade, delayed in port for any cause, to another vessel belonging to the same Line or owner.

Articles 106 and 107 of the Customs Regulations of 1915 are amended accordingly.

(Signed)

JOUETT SHOUSE,  
*Assistant Secretary.*

(99623.)

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## SCHEDULE B.

(Copy.)

(T. D. 38248.)

## Sea Stores—Liquors.

Opinion of the Attorney General with respect to the practice under T. D. 38218 of sealing liquors listed as sea stores on vessels while in ports of the United States. Distinction made between American and foreign vessels. T. D. 38218 amended.

Treasury Department, January 27, 1920.

To Collectors of Customs and Others Concerned:

Attention is invited to the appended copy of an opinion rendered the Department by the Attorney-General with respect to the practice under T. D. 38218 of sealing liquors carried as sea stores on all vessels while in the ports of the United States, as indicated by the questions submitted to him.

Following the opinion of the Attorney-General the first paragraph of T. D. 38218 is hereby amended to read as follows:

All liquors which are prohibited importation, but which are properly listed as sea stores on American vessels arriving in ports 19 & 20 of the United States, should be placed under seal by the Boarding Officer and kept sealed during the entire time of the vessel's stay in port, no part thereof to be removed from under seal for use by the crew at meals or for any other purposes. All such liquors on foreign vessels should be sealed on arrival of the vessel in port, and such portions thereof released from time to time for use by the officers and crew.

The other provisions of T. D. 38218 are not affected by the Attorney-General's opinion, and therefore remain without modification.

(108,377.)

JOUETT SHOUSE,

*Assistant Secretary.*

21 [Endorsed:] United States District Court, Southern District of New York. International Mercantile Marine Co., Complainant, vs. H. C. Stuart, Acting Collector of Customs, etc., et al. Bill of Complaint. Kirlin, Woolsey, Campbell, Hickox & Keating, Attorneys for Complainant, 27 William Street, New York, N. Y.

22 District Court of the United States, Southern District of New York.

In Equity.

INTERNATIONAL MERCANTILE MARINE COMPANY, Complainant,  
against

H. C. STUART, Acting Collector of Customs for the Port of New York; Ralph A. Day, Federal Prohibition Director for the State of New York; John D. Appleby, Chief Zone Officer, and William Hayward, United States Attorney for the Southern District of New York Defendants.

*Order Granting Temporary Restraining Order and Order to Show Cause Why Preliminary Injunction Should Not Be Granted Pendente Lite.*

The Court having read the annexed bill of complaint, and being satisfied that there is danger that immediate and irreparable loss or damage will result to the complainant before this motion can be heard unless a temporary restraining order is granted to preserve the situation as it now is, and due deliberation having been had, it is now by the Court

Ordered:

23 1. That the defendants herein show cause before this Court in Court Room 237 in the Woolworth Building, on Tuesday, October 17, 1922, at 10:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why an order should not be made herein restraining the defendants, their successors, agents, servants and subordinates, during the pendency of this suit, from seizing, distraining, removing or in any way interfering with the intoxicating liquors now on board the steamship St. Paul and Finland in the port of New York as sea stores, and why the defendants, their agents, servants and subordinates, during the pendency of this suit should not be restrained from arresting and prosecuting the complainant, its officers, agents, servants or employees, or any of them, or from attempting any seizure or forfeiture of any intoxicating liquors carried as sea stores on board the complainant's vessel St. Paul and Finland, by reason of the fact that such intoxicating liquors may be sold on the high seas and in foreign ports.

2. That the complainant have leave, up to the time fixed for the argument of this order to show cause, to serve such further additional papers and affidavits in support of this motion for an injunction pendente lite in this action as it may be advised.

24 & 25 3. Pending the determination of the motion on this order to show cause, the defendants, except the district attorney, their successors, agents, servants and subordinates, be and

they hereby are restrained from seizing, disturbing or removing or in any way interfering with the intoxicating liquors now on board the steamships St. Paul and Finland in the port of New York as sea stores; and the defendants, except the district attorney, their successors, agents, servants and subordinates, be and they hereby are restrained from arresting and prosecuting the complainant, its officers, agent, servants or employees, or any of them, or from attempting any seizure or forfeiture of any intoxicating liquors carried as sea stores on board the complainant's vessels St. Paul, Finland and Kroonland, or of the said steamships, by reason of the fact that such intoxicating liquors may be sold on the high seas and in foreign ports.

4. It is further ordered that service of a copy of this order on the defendants on or before October 14, 1922, shall be, and shall be deemed to be, sufficient service, and said service may be made by personal service thereof on the said defendants or by leaving a copy of this order at the offices of the said defendants.

Dated, New York, October 12, 1922, 12:30 P. M.

LEARNED HAND,

*United States District Judge.*

26 [Endorsed:] United States District Court, Southern District of New York. International Mercantile Marine Company, Complainant, against H. C. Stuart, et al., Defendants. Order, Kirlin, Woolsey, Campbell, Hickox & Keating, Attorneys for Complainant, 27 William Street, New York, N. Y.

27 District Court of the United States, Southern District of New York.

In Equity.

INTERNATIONAL MERCANTILE MARINE COMPANY, Complainant,  
against

H. C. STUART, Acting Collector of Customs for the Port of New York;  
Ralph A. Day, Federal Prohibition Director for the State of New York;  
John D. Appleby, Chief Zone Officer, and William Hayward, United States Attorney for the Southern District of New York, Defendants.

*Bond on Application for Restraining Order and Preliminary Injunction.*

Know all men by these presents, that International Mercantile Marine Company, a corporation of New Jersey, as principal, and Indemnity Insurance Company of North America, a corporation of Pennsylvania, as surety, are held and firmly bound unto H. C. Stuart, Acting Collector of Customs for the Port of New York; Ralph A. Day, Federal Prohibition Director for the State of New

28 York, John D. Appleby, Chief Zone Officer, and William Hayward, United States Attorney for the Southern District of New York, in the sum of One thousand (\$1,000) Dollars, to payment of which they bind themselves, and their successors firmly by these presents.

Dated, New York, this 11th day of October, 1922. The condition of the above obligation is such that

Whereas the International Mercantile Marine Company, a corporation of New Jersey, has filed in the equity side of the District Court of the United States for the Southern District of New York, a bill of complaint against the said H. C. Stuart, Ralph A. Day, John D. Appleby and William Hayward, and has obtained the allowance of a restraining order on a motion for a preliminary injunction as prayed for in said bill from said Court:

29 Now, therefore, if the said International Mercantile Company and the said Indemnity Insurance Company of North America will abide by the decision of the said Court and pay all damages and costs which may accrue to the defendants above named by reason of the said restraining order and/or the preliminary injunction prayed for in the said bill, in case the said restraining order and/or injunction shall be dissolved, then these presents shall be void; otherwise to remain in full force and virtue.

[SEAL.] INDEMNITY INSURANCE COMPANY OF  
NORTH AMERICA,

By GEO. H. SCHNEIDER,  
*Resident Vice President.*

Attest:

E. M. MCCARTHY,  
*Resident Assistant Secretary.*

INTERNATIONAL MERCANTILE MARINE  
COMPANY,

By M. THOMAS.

30 STATE OF NEW YORK,  
*County of New York, ss:*

On this 11th day of October, 1922, before me personally came John H. Thomas, to me known and who being by me duly sworn, deposes and says:

That he resides at New York City; that he is vice-president of the International Mercantile Marine Company, the corporation described in and which executed the foregoing bond; that he knows the seal of said corporation; that the seal affixed to said bond is such corporate seal; that the same was thereto affixed by order of the Board of Directors of the said corporation and that he signed his name thereto by like order.

C. D. SMITH,  
*Notary Public.*



## 31 &amp; 32 Indemnity Insurance Company of North America.

*Affidavit, Acknowledgment and Justification by Guarantee or Surety Company.*

STATE OF NEW YORK,

*County of New York, ss:*

On this 11th day of October one thousand nine hundred and twenty-two before me personally came Geo. H. Schneider, known to me to be the Resident Vice-President of the Indemnity Insurance Company of North America, the corporation described in and which executed the within and foregoing Bond of International Mercantile Marine Company as a surety thereon, and who, being by me duly sworn, did depose and say that he resides in the City of New York, State of New York; that he is the Resident Vice-President of said Company, and knows the corporate seal thereof; that the said Indemnity Insurance Company of North America, is duly and legally incorporated under the laws of the State of Pennsylvania; that said Company has complied with the provisions of the Act of Congress of August 13th, 1894; that the seal affixed to the within Bond of International Mercantile Marine Company is the corporate seal of said Indemnity Insurance Company of North America, and was thereto affixed by the order and authority of the Board of Directors of said Company; that he signed his name thereto by like order and authority as Resident Vice-President of said Company; that he is acquainted with E. M. McCarthy and knows him to be the resident Assistant Secretary of said Company; that the signature of said E. M. McCarthy subscribed to said Bond is in the genuine handwriting of said E. M. McCarthy, and was thereto subscribed by order and authority of said Board of Directors; and in the presence of said deponent; that the assets of said Company, unencumbered and liable to execution, exceed its debts and liabilities of every nature whatsoever, by more than the sum of One Million Five Hundred Thousand (\$1,500,000) Dollars.

That Wm. A. Thompson is the agent to acknowledge service for said Company in the Judicial District wherein this bond is given.

[Seal of Indemnity Insurance Company of North America, Incorporated, Pennsylvania, 1920.]

GEO. H. SCHNEIDER.  
(Deponent's Signature.)

Sworn to, acknowledged before me, and subscribed in my presence this 11th day of October 1922.

[Seal of Robert Spering, Notary Public, New York County.]

ROBERT SPERING,

*Notary Public.*

Notary Public, New York County.

Clerk's No. 372 Register's No. 4089.

Certificate Filed in Kings County.

Clerk's No. 128 Bronx Co., Clk's. No. 2.

Commission expires March 30, 1924.

33 [Endorsed:] United States District Court, Southern District of New York. International Mercantile Marine Company, Complainant, against H. C. Stuart et al., Defendants. Bond on Application for Restraining Order and Preliminary Injunction. Kirlin, Woolsey, Campbell, Hickox & Keating, Attorneys for Complainant, 27 William Street, New York, N. Y.

34

*Equity Subpoena.*

The President of the United States of America to H. C. Stuart, Acting Collector of Customs for the Port of New York; Ralph A. Day, Federal Prohibition Director for the State of New York; John D. Appleby, Chief Zone Officer, and William Hayward, United States Attorney for the Southern District of New York, Greeting:

You are hereby commanded to appear before the Judges of the District Court of the United States of America for the Southern District of New York, in the Second Circuit, to answer a bill of complaint exhibited against you in the said Court in a suit in Equity, by International Mercantile Marine Company, and to further do and receive what the said Court shall have considered in this behalf. And this you are not to omit under the penalty on you and each of you of Two Hundred and Fifty Dollars (\$250).

Witness, Honorable Learned Hand, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, on the 13th day of October, in the year One Thousand Nine Hundred and Twenty-two, and of the Independence of the United States the One Hundred and Forty-seventh.

ALEX GILCHRIST, JR.,

*Clerk.*

KIRLIN, WOOLSEY, CAMPBELL,  
HICKOK & KEATING,

*Complainant's Sol'r.*

The Defendants are required to file their answer or other defense in the above cause in the Clerk's Office on or before the twentieth day after service hereof excluding the day of said service; otherwise the bill aforesaid may be taken Pro Confesso.

[SEAL.]

ALEX GILCHRIST, JR.,  
Clerk.

35 U. S. District Court, Southern District of New York.

E25/7.

INTERNATIONAL MERCANTILE MARINE COMPANY, Complainant,  
versus

H. C. STUART, Acting Collector of Customs for the Port of New York;  
Ralph A. Day, Federal Prohibition Director for the State of New  
York; John D. Appleby, Chief Zone Officer, and William Hay-  
ward, United States Attorney for the Southern District of New  
York, Defendants.

*Notice of Appearance and Demand.*

You will please take notice that I am retained by, and appear as attorney for, the Defendant in this action, and demand service of a copy of the complaint and all papers in this action upon me, at my office in the United States Court and Post Office Building, in the City of New York, Borough of Manhattan.

Yours,

WM. HAYWARD,  
*United States Attorney, Attorney for Defendant.*

New York, Oct. 13, 1922.

To Kirlin, Woolsey, Campbell, Hickox & Keating, Esqs., 27  
William St., Attorney for Plaintiff.

[Endorsed:] E25 7. U. S. District Court, Southern District of New York. International Mercantile Marine Company, Complainant, versus H. C. Stuart, Acting Collector of Customs for the Port of New York et al., Defendants. Notice of Appearance. Wm. Hayward, United States Attorney, Attorney for Defendant. Due service of a copy of the within Notice is hereby admitted. Dated the 13 day of Oct., 1922. To Kirlin, Woolsey, Campbell, Hickox & Keating, Esqs., Plaintiff's Attorney, 27 William St.

36 In the District Court of the United States, Southern District of New York.

In Equity.

INTERNATIONAL MERCANTILE MARINE COMPANY, Complainant,  
against

H. C. STUART, Acting Collector of Customs for the Port of New York; Ralph A. Day, Federal Prohibition Director for the State of New York; John D. Appleby, Chief Zone Officer, and William Hayward, United States Attorney for the Southern District of New York.

*Affidavit.*

STATE OF NEW YORK,  
County of New York, ss:

John H. Thomas, being duly sworn, deposes and says:

I am Vice President of the Complainant herein. On October 12, 1922, the following cablegram was received from our agents in Antwerp:

"49 Kroonland liquors landed stop presume authorities understand Belgian Government regulations require 20 bottles Claret every 100 emigrants British Board of Trade regulations require Medical comforts one gallon Brandy per 100 passengers on foreign flag steamers with British emigrants clearing from British ports stop Kroonland has now Medical comforts only comprising two whiskeys 1 sherry which entirely inadequate emergency at sea stop hope this useful information."

On October 13, 1922, the following cablegram was received from Southampton from our agents there:

"Kroonland British Board of Trade demanded schedule quantity Brandy be aboard for medical comforts refused clear ship otherwise stop have therefore undertaken supply Brandy Cherbourg which Commander will strictly retain as medical comforts stop leave you to wire less Commander any instructions necessary stop situation will recur with each American flag steamer embarking third class Southampton."

JOHN H. THOMAS.

Sworn to before me this 16 day of October, 1922.

[SEAL.]

FRANK A. BERNERS,  
Notary Public, Bronx County.

Certificate filed in New York County.  
Certificate filed in Kings County.

39 [Endorsed:] United States District Court, Southern Dist.  
of N. Y. International Mercantile Marine Company, Com-  
plainant, against H. C. Stuart, Acting Collector, etc. et al. Affidavit.  
Kirlin, Woolsey, Campbell, Hickox & Keating, Solicitors for Com-  
plainant, 27 William Street, New York, N. Y.

40 United States District Court, Southern District of New York.

INTERNATIONAL MERCANTILE MARINE COMPANY, Complainant,  
against

H. C. STUART, Acting Collector of Customs for the Port of New  
York; Ralph A. Day, Federal Prohibition Director for the State  
of New York; John D. Appleby, Chief Zone Officer, and William  
Hayward, United States Attorney for the Southern District of  
New York, Defendants.

*Answer to Bill of Complaint.*

Now come the defendants herein and in answer to the amended  
bill of complaint by their attorney William Hayward, United States  
Attorney for the Southern District of New York, allege as follows:

First. Defendants move that the amended bill of complaint herein  
and divers parts thereof be dismissed, and assign the following  
grounds for this motion, namely:

1. The suit is in effect one against the United States and does  
not aver or show that the United States has consented to be sued  
herein.

2. The Court has no jurisdiction to grant the relief prayed for or  
any part thereof.

3. The bill does not present a cause of action in equity  
41 under the Constitution of the United States.

4. The bill does not disclose a cause of action equitable in its  
nature, civil in its character and arising under the Constitution of  
the United States.

5. The facts alleged in the bill are insufficient to constitute a  
valid cause of action in equity.

6. It appears from the bill that the complainant has a plain,  
adequate and complete remedy at law.

Second. Defendants deny so much of Paragraph "Ninth" of the  
bill of complaint as alleges that whilst on the high seas and in  
foreign ports, the vessels of the complainant are not territory subject  
to the jurisdiction of the United States within the meaning of the  
Eighteenth Amendment to the Constitution or subject to the laws  
which have been enacted for the enforcement of the provisions of  
the said amendment.

Third. Defendants deny the allegations contained in Paragraph "Tenth" of the complaint.

Fourth. Defendants deny the allegations of Paragraph "Twenty-second" of the complaint to the effect that the opinion of the Attorney General of the United States is erroneous and that the Eighteenth Amendment and the National Prohibition Act do not apply to intoxicating liquors legally acquired in foreign ports; and the defendant further deny that the threatened actions of the officials of the United States adverted to in Paragraph 42 & 43 "Twenty-second" of complaint are improper, unauthorized, void and without warrant of law and deny that such threatened actions would interfere with the constitutional rights of the complainant.

Fifth. Defendants deny so much of Paragraph "Twenty-third" of the complaint as alleges that the possession of intoxicating liquors by the complainant on the ships mentioned in the complaint is a legal possession thereof and deny the rights of the complainant to possess such liquors within the United States or to transport such liquors within the territorial waters of the United States, whether under seal or not.

Wherefore, defendants pray that the amended bill of complaint herein be dismissed and that the defendants have such other and further relief as to the Court may seem just and that the defendants recover their costs and disbursements herein.

WILLIAM HAYWARD,

*United States Attorney for the  
Southern District of New York.  
Attorney for Defendants.*

Office & P. O. Address, U. S. Courts & P. O. Bldg., Borough of Manhattan, City of New York.

44 [Endorsed:] U. S. District Court, Southern District of N. Y. International Mercantile Marine Co., Complainant, vs. H. C. Stuart, etc. Answer to Bill of Complaint. William Hayward, U. S. Attorney, Att'y for Defendants. Kirlin, Woolsey, Campbell, Hickox & Keating, 27 William Street, New York.

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45 United States District Court, Southern District of New York.

In Equity.

25—7.

INTERNATIONAL MERCANTILE MARINE COMPANY, Complainant,  
against

H. C. STUART, Acting Collector of Customs for the Port of New York; Ralph A. Day, Federal Prohibition Director for the State of New York; John D. Appleby, Chief Zone Officer, and William Hayward, United States Attorney for the Southern District of New York.

*Stipulation Amending Bill of Complaint.*

It is stipulated by and between the United States Attorney and the solicitors for the complainant herein, that the Fifteenth Article of the bill of complaint herein be amended by adding at the end of the said article, the following:

"In pursuance of said rulings and instructions, as the complainant is informed and believes, the United States Attorney purposes and threatens to enforce against the complainant, its agents and servants, penalties, forfeitures and seizures under the National Prohibition Act and to prosecute the complainant, its agents and servants thereunder, by reason of sales to passengers of liquor carried as  
46 & 47 sea stores which have been made by the complainant, its agents and servants on the high seas and in foreign ports in reliance on the rulings of the Treasury Department now and heretofore in force, copies of which are hereto annexed."

Dated, October —, 1922.

WM. HAYWARD,

*United States Attorney.*

KIRLIN, WOOLSEY, CAMPBELL, HICKOX  
& KEATING,

*Solicitors for Complainant.*

48 [Endorsed:] In Equity, 25-7. United States District Court, Southern District of New York. International Mercantile Marine Company, Complainant, vs. H. C. Stuart, etc., et al. Stipulation Amending Bill of Complaint. Kirlin, Woolsey, Campbell, Hickox & Keating, Solicitors for Complainant, 27 William Street, New York, N. Y.

49 United States District Court, Southern District of New York.

INTERNATIONAL MERCANTILE MARINE

against

HENRY C. STUART, Acting Collector of Customs for the Port of New York, et al.

UNITED AMERICAN LINES

against

HENRY C. STUART, Acting Collector of Customs for the Port of New York, et al.

Appearances:

Cletus Keating, Esq., and John —. Woolsey, Esq., for International Mercantile Marine.

Reid L. Carr, Esq., for United American Lines.

William Hayward, Esq., United States Attorney, and John Holley Clark, Esq., Assistant United States Attorney, for Defendants.

LEARNED HAND, *D. J.*:

The plaintiffs (the American Lines) have now amended their bills so as to allege that the District Attorney for the Southern District of New York has threatened to prosecute them for sales made on ship-board at sea upon ships of American registry. Therefore the question is raised which I declined to consider in my original opinion and its decision has become necessary.

50 The question so raised is altogether different from that discussed before. No difficulty arises from the character of the act itself. The plaintiffs sell liquors on the high seas, or dispense them to passengers. The only question is of the place where this occurs, i. e., on board a ship of American registry outside the boundaries of the United States. Is that a place covered by the Eighteenth Amendment? I may in the first place lay aside any question of Congressional intent. Section three alone would have been enough, as I have already interpreted it, to cover all places where the Amendment could operate. However, I am not left in this matter to Section three alone; Section three of the Supplemental Act passed November 3, 1921, leaves no doubt of the intent of Congress. By this it was enacted that the original Act should "apply not only to the United States but to all territory subject to its jurisdiction," almost exactly the words\* used in the Amendment itself. Whatever doubt there might be,—and it seems to me that there was none—of the meaning of the original Act, it is certainly laid by this Section of the latter.

It is, however, argued that there is no provision in the Prohibition Enforcement Act under which sales at sea could be prosecuted. The

\*The Amendment reads, "the jurisdiction thereof."



penalties for sales of liquors are provided in Section twenty-nine of the Act, and are general in their character. They do not specify where the prosecution shall take place or any of its procedure. This is quite natural, since all such matters are provided for in the statutes of the United States. By Revised Statutes, Section 730, it is enacted that "the trial of all offenses committed on the high seas \* \* \* shall be in the district where the offender is found or into which he is first brought." On its face this would cover a sale of liquor upon a ship at sea, if that were in fact a crime. I can see no reason to limit its scope to crimes such as are created by Chapter thirteen of the Criminal Code and are there described as crimes on the high seas. If congress, having power to make an act done at sea criminal, does so, it is none the less a crime committed at sea, because it is not described as such. And so there seems to me nothing in this point, once it appears that the purpose was to make all sections of the act apply as generally as the Amendment allowed.

Therefore, the question becomes a straight interpretation of the Amendment itself. Does it cover American ships on the high seas? The plaintiffs argue that nothing is specified as to ships, that it is only by a fiction (and that too one which does not universally apply)

that an American ship may be called a part of the territory of the United States, that in dealing with Section three of Article four of the Constitution, the word, "territory" has been defined as "lands" and that the limitations upon the power of Congress have been held not to apply to territories until they have been extended by Congress, *Downes v. Bidwell*, 182 U. S. 244, 278, *Dorr v. U. S.* 185 U. S. 138, *Hawaii v. Mankichi*, 190 U. S. 197.

It is quite true that the Amendment does not mention ships; nor does it mention waters, or islands. But a constitution is not a deed; its intent is not exhausted by its details, but incorporated in its objects. The question is not what it specified, but what it wills. It is also true that it is a fiction to call a ship a part of the territory of the flag State, although for some purposes it is so treated.\* But as Lord Blackburn said in *Reg. v. Anderson*, L. R. 1 Crown Cas. Res. 161,

169, it has been called such in countless cases, and that is important when one is interpreting legal words, because though fictions may be only the disguises of the law before logic, they are parts of its wardrobe for all that. While it may be,—and I expect it is—only a coincidence that a ship conventionally falls within the words so used in the Amendment, it is therefore no answer to argue that it does so through a legal fiction.

\*Oppenheim (International Law Vol. I "Peace" Sec. 172), says "merchantment on the high seas are for some points treated as though they were floating parts of the territory of the State under whose flag they legitimately sail." Again, in more specific language, (Sec. 264), "Private vessels are only considered as though they were floating portions of the flag State in so far as they remain whilst on the open sea in principle under the exclusive jurisdiction of the flag State. Thus the birth of a child, a will or business contract made or a crime committed on board ship, and the like, are considered as happening on the territory, and therefore under the territorial supremacy of the flag State. But although they appear in this respect as though they were, private vessels are in fact not floating portions of the flag State."

Second, the plaintiffs overpress a chance phrase in *U. S. v. Gratiot*, 14 Pet. 526, 537. In speaking of Section three of Article four Thompson, J. said that "territory" was "equivalent to lands," hence the plaintiffs believe that "territory" in other parts of the Constitution can only mean lands. Indeed, "lands" might properly enough include waters, and if it did not, the reasoning would deprive the United State of jurisdiction over the bays and waters of Alaska, for example. However, I do not wish to rest on any such verbal dialectic. It is of course fair to construe the Constitution as a whole and by cross-reference; yet the same word need not always mean the same thing. The Eighteenth Amendment certainly includes under "territory subject to the jurisdiction" of the United States all the "territory" covered by Section three of Article four, but it may include more as well. It was, I think, equivalent to the phrase, "territorial jurisdiction," and it is not unlikely that the currency of that phrase

54 Thirteenth Amendment, a chance in which I cannot see any significance.

Either phrase means to include all subjects of the State's power and the verbal difficulties touching ships arise, I suspect, from a confusion which goes deeper than at once appears. According to modern notions the jurisdiction, i. e. the power to do as it wills, of a State, is limited by geographical boundaries. But it has been so only recently; until at least the Sixteenth Century sovereignty was personal, and allegiance was the basis of what we should now call jurisdiction. The seas admit of no boundaries; they are free to all and upon them territorial jurisdiction is anomalous. Yet a ship has by a curious persistence retained from very ancient times a fictitious personality, more perhaps in our law than elsewhere. *The China*, 7 Wall. 53, *The Barnstable*, 181 U. S. 464, 467, 468, *The Eugene F. Moran*, 212 U. S. 466, 474.

To attribute, therefore, a fictitious personal allegiance to a ship was natural, and such in effect she has, even to the extent of subjecting to jurisdiction the nationals of another State, in *re. Rose*, 140 U. S. 453. It was equally natural, nevertheless, for the law to insist upon its more modern territorial category, so as to hold its old wine in

55 new bottles, and to keep that face of consistency which is so important to its prestige. This I believe may be the reason for the fiction which the plaintiffs decry, and this makes it proper to include within such phrases as these a subject of power which cannot with any propriety be classified territorially.

Nor does the plaintiff's final argument fare better. Cases like *Downes vs. Bidwell*, *supra*, *Dorr v. U. S.*, *supra*, *Hawaii v. Mankichi*, *supra*, have no application. They dealt with limitations on a delegated power of Congress, which it must extend to the territories before it will apply. In *re. Ross*, *supra*, was like them; it dealt with the right of trial by jury in a consular court. But the Eighteenth Amendment is not limitation upon the powers of Congress; it is not even a new power conferred. It is a "police" regulation, emanating directly from the sovereign legislating in person and not by deputy. As such it is self-executory, *qua prohibition*, (National Prohibition

Cases, 253 U. S. 350, 386 "Sixth Conclusion") and needs no extension by Congress. For its effective enforcement statutes must indeed be passed, but it extends to what it covers *ex proprio vigore*.

However, the form of the Amendment answers the argument. In 1920 the United States had all been organized into States and "territory" which meant something could only mean possessions acquired by conquest or purchase. To these the Amendment  
56 extended by its own terms, and the question can only be what those terms mean. If they include ships of American registry, these are within it by the very language; if they do not, Congress cannot extend it to them. Ships are not in a third class, but perhaps the easiest answer is that if Congress must act, it has acted, as I have already said. Nor is the exemption of the Canal Zone material. Congress has indeed shown that it supposed it could exclude certain transportation from the Amendment and perhaps Congress is right. Even so, no inference can be made that it thought the Amendment did not apply before it had acted, and if it could, with all deference the supposition would be an error.

*Scharrenberg v. Dollar S. S. Co.* 245 U. S. 122, seems indeed a case for the plaintiffs, and so it is, if some of the language be read without care. But in that case while the statute considered was as broad as the Amendment, the facts were quite different. The question was whether the ship had assisted in the migration or importation into the United States of a contract laborer, that is of a person who was to "perform labor in this country." The court held first that a seaman was not a laborer, and second, that on a ship he was not employed to "perform labor in this country." Now clearly "this country" is a different phrase from "territory subject to the jurisdiction of the United States." Granting that when he was assisted to sign on, he was "imported into" the United States, a very doubtful concession at best, he was certainly not laboring in the country when he helped work the ship. The language of Mr. Justice Clarke on page 127, on which so much stress is put, is carefully guarded; it says only that a ship is not territory in the sense of that statute, especially agreeing that for purposes of jurisdiction it often is. No argument can be drawn from so limited a statute to a comprehensive amendment such as that at bar.

57 So much then for verbal discussion. The natural meaning of the words includes all subjects over which the United States has jurisdiction. As for implications, I need add nothing to what I have already said in my first opinion. It would be a curious thing if a country professing under its fundamental law to forbid the use of intoxicants were to allow them without stint upon ships that sailed under its flag. The only distinction pressed is the disastrous consequences to an American merchant marine if of all ships at sea ours alone are within this ban. In the first place, the discrimination applies only to passenger vessels, which are a small part of any merchant marine. The whole argument is, however, misconceived. The Eighteenth Amendment involved the destruction at a blow of property values far greater than that of the whole

passenger fleet. The motives which directed it disregarded ordinary commercial interests; it was a reform based upon the belief that the use of alcohol was one of the great evils of modern life, against whose utter extirpation no present rights of property might stand. (National Prohibition Cases, supra, Tenth Conclusion.) And while a merchant marine may be thought to have a national importance quite independent of the property involved in it, a court may not imply exceptions in the language of a constitution based upon its estimate of the relative advantages of what it will realize and what it will destroy.

I conclude therefore that a ship of American registry at sea or within a foreign port is within the scope of the Amendment and of Section three, and that the bills must be dismissed. The International Mercantile Marine sails from the port of Antwerp. By Belgian law a certain ration of wine is prescribed for all passengers, without which clearance will be denied. Pending the appeal and in addition to the stays given in the other cases, the District Attorney will be stayed from undertaking any prosecution against that plaintiff because of compliance with the Belgian law in that regard. This does not apply to east bound voyages. I see no reason why the bond should be larger on this account, but I will hear the District Attorney on that point if he wishes.

Bill dismissed with costs; injunctions as stated pending appeals. Settle orders on notice.

October 26, 1922.

— — —  
D. J.

60 United States District Court, Southern District of New York.

THE CUNARD STEAMSHIP COMPANY, LTD., and ANCHOR LINE  
(HENDERSON BROTHERS, LTD.),

against

ANDREW W. MELLON, Secretary of the Treasury of the United States,  
et al.

And Ten Other Cases.

These cases come up upon motions by the defendants to dismiss the bills, and by the plaintiffs for final decrees upon the answers. The pleadings have been so drawn on both sides as to raise the merits of the controversy, and it is not necessary to set them forth in detail.

The facts are these: Since the enactment of the War Prohibition Act in October, 1919, which was followed in January, 1920, by the Eighteenth Amendment and the National Prohibition Act, it has been the continuous custom of all transatlantic passenger steamers to bring into the Port of New York limited stocks of wines and liquors as part of their sea-stores. This was done with the consent

of the public authorities who promulgated regulations recognizing the practise, but providing that, while within the territorial waters of the United States, they should remain intact under seal. The theory on which the authorities proceeded, acting on an opinion at that time given by the Attorney General, was that, as part of the ship's stores, these wines and liquors, if sealed and kept on board, were not to be regarded as brought within the country at all, or as subject to its municipal law, in accordance with the general rule that as respects what happens upon the deck of a foreign ship, the municipal law does not apply, except in cases where the peace of the sovereign is at stake. Later the permission so given was further extended to allow the ships to dispense to their crews the customary ration of wine, as was in some cases required by the laws of the country from which they came.

This being the posture of affairs, on May 15, 1922, the Supreme Court decided in the cases of *Grogan v. Walker*, and *Anchor Line v. Aldridge*, that the bare transit of liquors across the territory of the United States was transportation within the Eighteenth Amendment. Thereafter the present Attorney-General, after consideration, on October fifth, 1922, rendered an opinion to the Secretary of the Treasury that these decisions covered passenger steamers plying in and out of the ports of this country. The President thereupon publicly announced that after a given date he should proceed to execute the law in accordance with this opinion, and this created the situation out of which these bills arise.

The practice of all steamers has been freely to sell wines and liquors out of these stocks to their passengers on east-bound voyages when once outside the league limit, and to replenish them in Europe so that they should suffice for a round trip. The stocks in question are therefore carried into the Port, kept there under seal, and carried out again, only for the entertainment of passengers embarking from the United States. Besides the wines and liquors so used the steamers carry a stock for the use of their crews. In

the case of the French, Italian and Belgian ships the law of their flag requires them to supply a ration of wine and in those cases it is possible that the ships may not be able to obtain clearance unless they comply with this provision. Furthermore, the use of wines, beers or liquors among the peoples except Americans from whom the crews of all the ships are drawn, is habitual and these beverages are regarded as a necessary part of their ration.

Among the plaintiffs are two lines which sail under the American flag. These the authorities have always treated like the foreign lines; they have freely sold their wines and liquors at sea and brought them into port under the same restrictions and with the same privileges as the rest. They are now, however, subject to the same proposed action by the defendants.

The defendants are not the same in all the suits. In some cases the Secretary of the Treasury is joined, in some the United States Attorney for the Southern District of New York, and in some the

Zone Officer, but the Collector of the Port of New York and the local Prohibition Director are defendants in all.

#### Appearances:

Hon. Van Vechten Veeder, for Oceanic Steam Navigation Co., Ltd., Liverpool, Brazil & River Plate Steam Navigation Co., Ltd. United Steamship Co. of Copenhagen, The Royal Mail Steam Packet Co., The Netherlands American Steamship Co. (Holland America Line) and Pacific Steam Navigation Company.

Lucius H. Beers, Esq., for The Cunard Steamship Co., Ltd., and Anchor Line (Henderson Brothers).

Joseph P. Nolan, Esq., for Compagnie Generale Transatlantique.

Reid L. Carr for United American Lines, et al.

Cletus Keating, Esq., and John M. Woolsey, Esq. for International Mercantile Marine—Int. Nav. Co. Ltd.

William Hayward, Esq., United States Attorney, and John Holley Clark, Esq., Asst. U. S. Attorney, for Defendants in all cases.

#### 63 LEARNED HAND, D. J.:

It is conceded, and indeed could not be disputed, after *Grogan v. Walker and Anchor Line v. Aldridge*, decided May 15, 1922, that, had the liquors here in question been a part of the ships' cargo, the bills would not lie. It makes no difference that they were not to be broached while carried within territory of the United States; the carriage would be transportation none the less. But because they are part of the ships' stores, in the sense that that term is generally understood, the plaintiffs argue that they do not fall within the same rule. This argument rests upon two alternative premises, first, that "transportation" involves a place where, and a person to whom, the goods are to be delivered, and second, that a ship's stores have by long custom been treated as a part of the "furniture." *Brough v. Whitmore*, 4 Term R. 206, or "appurtenances," *The Dundee*, 1 Hagg. Adm. 109, of the ship, which do not without particular mention become subject to the municipal law of the ports into which she enters, any more than the ship herself.

Even if "transportation" were defined to involve some delivery, I do not see how that would help the plaintiffs. These liquors are carried for delivery at sea to the passengers and crew, and when so delivered their transportation ends. There appears to me no significant distinction in the fact that the place of delivery is the ship itself. The passengers, and for that matter, the crew, are not the same person as the owner, and if the passage of title or possession has anything to do with the matter, the title to, and possession of, the bottle or the dram, passes when it is handed to its consumer. The carriage within the limits of the Port of New York is a part of a

transit whose purpose from the beginning is that very delivery. The fact that the place and the person are undefined is as irrelevant as it would be if a collier cleared to search out and coal at sea friendly cruisers during war, as happened in 1914.



Therefore, I might admit the plaintiff's interpretation of the word, if it were necessary. Nevertheless, it seems to me at best very doubtful whether it carries with it any such limitation. The cases on which the plaintiffs rely come only to this, that the jurisdiction of the United States under the interstate commerce clause does not terminate until delivery after a transit across State lines, *Gloucester Ferry Co. v. Pa.*, 114 U. S. 196, *Rhodes v. Iowa*, 170 U. S. 412, *Louisville & Nashville R. R. v. Cook Brewing Co.*, 223 U. S. 70, *Dan-eiger v. Cooley*, 248 U. S. 319. From this it does not follow that the term, "transportation," as used in this statute, implies delivery to another than the person who carries the liquors. Suppose, for example, a parcel of liquor, made after the Amendment, and carried off to be laid away in a cache. There can be no question, I believe, that two separate crimes would be committed, "manufacture" and "transportation."

Nor does it seem to me that the thirteenth and fourteenth sections of Title II of the Prohibition Act, help the plaintiffs. Under these, carriers are required to mark the consignor's and consignee's names on the outside of all packages. But it does not follow that a regulation like this of one kind of transportation imputes to the word itself any of the conditions which it enacts. In common use to transport means to carry about, and I see no reason why it should mean less in Section three. The law clearly intended by immobilizing liquor to make surreptitious traffic in it impossible and its policy  
65 would as well cover movements which might be incidental to, as those which immediately terminated in, a delivery to someone else. The case of *Street v. Lincoln Safe Deposit Company*, 254 U. S. 88, did not decide anything to the contrary; it turned upon the fact that the possession of the liquor in the leased room and in the house were both lawful, and that the movement from one to the other could not be unlawful. To apply it to the cases at bar is to beg the question, because the lawfulness of the possession here depends upon whether this is transportation under the statute. The steamers have no express warrant of law, as *Street* had, for the possession of the liquor. I conclude therefore that the carriage in question is "transportation."

The first point being thus disposed of, I come to the second. It is a very plausible argument to say that ship's stores ought not to fall within the general language of Section three; so plausible indeed that for three years it prevailed with the authorities charged with the enforcement of the statute. Their understanding is not to be ignored in interpreting the law itself, under well-settled canons. Since 1799 it has been recognized in the customs regulations of the United States (Revised Statutes, Sections 2795, 2796, 2797), that reasonable sea-stores shall not be subject to duty. While they must be manifested and may not be excessive in quantity, as such they are not regarded as entering into the commerce of the country. The plaintiffs say that, therefore, when Section three of the National Prohibition Act forbids generally the transportation of liquors, it must be read in the light of this statute and the long usage under it, and that what is not

66 within the United States for the purposes of customs ought not to be so for purposes of prohibition. In addition they urge that under the maritime law it is held that for most purposes sea-stores will be treated as a part of the ship herself. If she is not regarded as being within the country, neither ought the accessories to her voyage.

It is of course true that one should not interpret a statute, and least of all a constitution, with the text in one hand and a dictionary in the other, and so courts have often held in similar cases to these, *Brown v. Duchesne*, 19 How. 183, *Taylor v. U. S.*, 207 U. S. 120, *Scharrenberg v. Dollar Steamship Co.*, 245 U. S. 122. Nevertheless, everyone must agree that the question is no more than one of interpretation, for in the cases at bar Congress certainly might, if it chose, prevent the entrance of any liquor whatever within the borders of the United States, not only under the Eighteenth Amendment, but indeed under its power over foreign commerce. It is a question, therefore, of the implied limitations upon words which literally in any event cover the case.

*Grogan v. Walker*, *supra*, and *Anchor Line v. Aldridge*, *supra*, plainly meant to adopt a broad canon for the interpretation of the National Prohibition Act, following the admonition at the end of the first paragraph of Section three. Effecting a revolutionary reform in the habits of the nation, the statute is to be understood as thorough-going in its intent to accomplish the results desired. It did not specify the extent of its application in detail, but left that to be gathered from its occasion, and the generality of the words used. It intended to exercise once for all the complete power of Congress under the Amendment, and its very want of particularity is a good index

67 that it meant to cover what it could. For this reason it is to be distinguished from earlier local acts of the same kind, as for example, the Alaskan Prohibition Act, upon the language of Section twenty-nine on which the plaintiffs rely. Indeed, specification in the statute might have defeated its ends, on the theory that what was omitted must be taken as excluded. At least I cannot read the two decisions cited without supposing that it was in the foregoing sense that the Supreme Court meant section three to be read.

Starting with that premise there appears to me more reason for supposing that section to cover these ship's stores than the transportation there before the court. I say this because it was necessary to overrule at least as much, if not more, to reach the result in those decisions, and especially because there were in them much stronger reasons to imply an exception from the literal language of the act. First, in those cases there was a statute which gave as much right of transit across the territory of the United States as here, and that statute had the support of a treaty negotiated only five years later, and assumed in the opinion of Mr. Justice Holmes to be still in force. Assuming that the customs laws give a positive right to enter ship's stores into the United States, a position in itself very doubtful, since in form it only exempted them from customs duties, at least it must be conceded that the statute, old as it is, represented only the policy, and not the promise, of the nation. It is true that the custom in



maritime affairs is of long standing to treat such stores as a part of the ship, but balancing that consideration with the implication against the repeal of a treaty. I cannot help believing that the second is the more weighty. At best it can only be said that the cases are on a parity in this regard.

68 However, the motives for positively assuming that such stores must be considered as included within Section three appear to me stronger than any which could apply to a bare carriage across our territory. It is true that all such reasoning as to legislative motives is speculative, but that vice, if it be one, is of the plaintiffs' making, because the language of the statute taken in its natural meaning is general and covers the case of stores, as of other merchandise. It is the plaintiffs who insist upon implying limitations on that meaning, because of the supposed intent of Congress. Since, therefore, I am asked to have recourse to implications, I cannot avoid some speculation as to what Congress would probably have said, had it been faced with the actual situation which now arises.

In the decisions cited there was no conceivable danger in the transit of liquor across the United States except the chance of its escape. It is true that as suggested in *Grogan v. Walker*, supra, the provision against export may have been intended to prevent the use of stimulants outside the United States and so far as it was, the argument applies with stronger force to the cases at bar. But taken substantially, the only evil which the transit could accomplish was that some of the liquor should not complete its passage. In the cases at bar the danger of an escape is equally present, not perhaps in the case of these plaintiffs, but I cannot regard them alone. Less responsible owners may not be as scrupulous, and the law runs for all. The distinction which puts these cases within the law with much greater certainty is the purpose for which the liquors are brought and kept here. Ignoring for the moment the crews, all of

69 the stocks are avowedly intended for the consumption of those who are now within the United States, of which a substantial part are residents or citizens, the very persons whom it was the whole purpose of the Amendment to prevent drinking liquors.

Naturally I have nothing to say about the wisdom of the Amendment or the law, but, wise or not, one thing is clear, that a drink of whisky is as hurtful to health and morals outside as inside Ambrose Light. It appears to me inconceivable, when one is discussing the implied intent of Congress, that a statute cast in such sweeping terms should be read as indifferent to open preparations within the United States for the gratification by its citizens of exactly those appetites which it was the avowed intent of the statute altogether to deny. Nor do I believe that anyone would hesitate to think so who did not already repudiate the whole reform. If, for example, we were to substitute cocaine or opium for alcohol, I can scarcely think there could be any disinterested difference of opinion. Suppose it were the habit of Chinese vessels to bring to our ports among their stores a proper supply of morphine and opium with the avowed purpose of dispensing it freely to passengers from the United States as soon as they cleared the league limit. Could it be seriously argued

that a constitutional amendment and a statute in broad language designed to prevent citizens from using this drug did not cover so palpable a means of nullifying the very purpose of the law? The illustration is extreme only to those who can see no parity between the evils of opium and alcohol. But a judge cannot take any position on that question; it must be enough for him that each is forbidden.

70 It is indeed different with so much of the stocks as are kept for the crews, and a much stronger argument can be made for the legality of their carriage, though these also seem to me to fall within the decisions I have so often cited. However, that question is really irrelevant as these cases are presented. The plaintiffs base their argument on the improbability that a statute in such general words should have meant to cover sea stores. This in turn rests upon the unlikelihood that what has been for so long treated as not subject to municipal law should all at once become so. But the argument breaks down as soon as it appears that the stores as a whole cannot fairly be excluded. To say that the section covered some of such stores, but not all, would be to admit that as such they were not excluded by implication. What then becomes of the argument? There are indeed cogent reasons why these might be excepted, but these are not because they are ships' stores. Congress may indeed determine to make an exception in their favor, as to the validity of which I have nothing to say, but I do not think that a judge can imply the exception because of the unquestioned difficulties in which its absence leaves the plaintiffs. There is a narrow limit to judicial redrafting of statutes. Indeed, the argument was not suggested at the bar that passengers' refreshment and crews' rations stood in different positions. Probably none was intended, and I mention it only against the possibility that it might be taken later.

Cases like *Brown v. Duchesne*, *supra*, *Taylor v. U. S.*, *supra*, and *Scharrenberg v. U. S.*, *supra*, are all indeed in point. They illustrate the extent to which seamen and ships are regarded as enclaves from the municipal law. But they were all judicial exceptions by implication out of the words of a statute, and they therefore depended upon how far in the circumstances of each case it was improbable that "the natural meaning of the words expressed an altogether probable intent." Were it not for the declaration of the Supreme Court in what I regard as far weaker circumstances, that the literal meaning of Sec. 3 accords with the probable intent, they might embarrass my conclusion. As it is, they do not, for in such matters each case is *sui generis*, and I have only to follow any decision which is apt to the statute under consideration. For these reasons I hold that the threatened action of the defendants is legal and that the bills must be dismissed.

It is obvious that this ruling disposes of the cases of the American ships as well as of the foreign. The American bills contain no allegations that the defendants intend to prosecute them for the sale of liquors upon the high seas, as for example on westward voyages. It is true that the prayers for relief do include so much,

but prayers without allegations are ineffective. I do not therefore find it necessary to consider the legality of any sales of liquor under the American flag on the high seas, assuming no liquor is brought within our territorial limits. It was my understanding at the argument that the territoriality of an American ship at sea was discussed only against the possibility that I should hold that it was not illegal merely to carry liquors into and out of the Port.

I suppose that the question of a temporary restraining order pending the appeal is of a good deal more consequence to the plaintiffs than anything I may think about the law. The power under

72 the Seventy-fourth Rule to grant such an order is undoubtedly, notwithstanding a dismissal of the bill, *Merrimac River Savings Bank v. City of Clay Center*, 219 U. S. 527, *Staffords v. King*, 90 Fed. R. 136, (C. C. A.). Moreover, the whole thing rests in the discretion of the trial judge. The question is how far the absence of any protection to the losing party will expose him to serious and irreparable damage, if in the end he wins, without imposing an equal damage upon the other party, if he holds his decree. Like all such matters, it depends upon a balance between the two, and I must now assume that the chances of success are not equal.

On the one hand the plaintiffs are in unquestionable embarrassment. They must take off their stocks of liquor now in port, and if they bring any westward with them they must calculate with some nicety on the consuming capacities of their passengers or take the chances of a seizure of the residue in New York. Nevertheless so far as the loss of the liquors themselves is concerned the damage cannot be said to be irreparable. These must be condemned before they can be forfeited, and in the present state of the calendars the cases at bar will be finally determined long before such libels can be tried. If I am wrong, the plaintiffs will get back their property after a delay which I cannot regard as an irreparable damage. If I am right, it would be obviously improper by staying the defendants to allow the liquor to escape a seizure to which the United States is entitled under its laws. With the conduct of any such proceedings I have nothing to do. It may be that the long acquiescence of the authorities in the practices here in question will moderate the ultimate penalty of confiscation; I must assume that the plaintiffs will

73 receive such consideration as the law permits, but I ought not to protect them against proceedings to which they by hypothesis would be legally subject.

However, I do not understand that they are so much concerned over the possible loss of existing stocks as over the right meanwhile to carry them in and out as a means of selling them at sea and serving them as a part of the crew's ration. If the ration is cut off, some in any case of the plaintiffs will be in a serious dilemma between two conflicting laws. The others will probably have a good deal of trouble and expense in securing seamen who will sign on upon a "dry" ship. On the other hand, foreign crews are scarcely within the dominant purpose of the Eighteenth Amendment. It appears to me just on a fair balance of the relative advantages to stay the enforcement of the law against stocks of wine and liquor necessary

for crew's rations, if, honestly kept and dispensed for that purpose alone.

As to the maintenance of passengers' stocks the case is otherwise. The plaintiffs are all upon the same competitive footing inter se and only claim to fear the competition of Canadian lines. How serious that may be no one can tell, but certainly it will be felt much less during the next two or three months than at another season. In any event, on the balance of advantage I ought not to allow it. It is easy to say, if one does not take seriously the opinion behind the Amendment, that the United States will not suffer by the continuance of the status quo. But it is impossible to say so, if one does. I repeat what I said in *Dryfoos v. Edwards*, filed October 10, 1919, on a similar occasion. The suspension of a law of the United States, especially a law in execution of a constitutional amendment, is of itself an irreparable injury which no judge has the right 74 & 75 to ignore. The public purposes, which the law was intended to execute, have behind them the deep convictions of thousands of persons whose will should not be thwarted in what they conceive to be for the public good. No reparation is possible if it is.

Furthermore, it is at best a delicate matter for a judge to tie the hands of other public officers in the execution of their duties as they understand them, and the books are full of admonitions against doing so, except in a very clear case. Here not only is the case not clear, but, so far as I can judge, the plaintiffs have no case. Therefore I will go no further than to issue an injunction against interfering with the carriage of a stock necessary for the crews' rations on the east-bound voyage. The plaintiffs must each give a bond in the sum of twenty-five thousand dollars, conditional against the use of such stocks for any other purpose than as crews' rations.

Bill dismissed with costs; injunctions as indicated pending an appeal if the same be taken at once. Settle orders on notice.

October 23, 1922.

— — — — —  
D. J.

76 [Endorsed:] United States District Court, Southern District of New York. Opinion, Learned Hand, D. J.

77 At a Stated Term of the District Court of the United States for the Southern District of New York Held in the Court Rooms Thereof, at the Post Office Building, in the Borough of Manhattan, City of New York, on the 30 Day of October, 1922.

Present: Honorable Learned Hand, District Judge.

## In Equity.

INTERNATIONAL MERCANTILE MARINE COMPANY, Complainant,  
against

H. C. STUART, Acting Collector of Customs for the Port of New York;  
Ralph A. Day, Federal Prohibition Director for the State of New  
York; John D. Appleby, Chief Zone Officer, and William Hay-  
ward, United States Attorney for the Southern District of New  
York, Defendants.

*Final Decree.*

This cause came on to be heard at this term upon motions by the defendants to dismiss the amended bill of complaint, and by the plaintiffs for a final decree in their favor on the pleadings, and was argued by counsel; and thereupon, upon consideration thereof, it was

Ordered, adjudged and decreed that the amended bill of  
78 complaint herein be dismissed and defendants have judgment  
against the complainant for their costs to be taxed, and it is  
further

Ordered, adjudged and decreed that until final hearing of this  
cause in the Supreme Court of the United States, and the entry of an  
order or decree on the mandate of that Court, the defendants, their  
servants, agents and subordinates, be and they hereby are stayed and  
restrained from seizing or interfering with the sale, possession or car-  
riage on the complainant's vessels of any and all intoxicating bev-  
erages kept on board as sea stores as required by Belgian or other  
foreign law on vessels sailing from Belgian or other foreign ports to  
ports of the United States; and that the United States Attorney be,  
and he hereby is stayed and restrained from commencing any prose-  
cution against complainants, its officers, agents and/or servants, in-  
cluding the masters and officers of the complainant's vessels; and that  
the Acting Collector of the Port be and he hereby is stayed and re-  
strained from interfering in any way with the entrance and clearance  
of the vessels of the complainant with such intoxicating beverages  
on board, kept on board as sea stores, provided, however, that this  
stay shall go into effect only when the complainant shall have filed  
a bond in the penal sum of \$25,000 conditioned against the gift, is-  
suanee or sale of such intoxicating beverages by the com-  
79 & 80 plainant, its officers, agents, servants and the masters and  
officers of its vessels, otherwise than as rations of passengers  
and crews on the westbound voyages of the complainant's vessels, and  
it is further

Ordered, adjudged and decreed that if the complainant herein  
shall fail to take an appeal herein to the Supreme Court of the United  
States within five days from the entry hereof, or to move for prefer-  
ence on the first motion day of the Supreme Court, the defendants  
may move herein to vacate the injunction granted above.

LEARNED HAND,

U. S. D. J.

81 [Endorsed:] United States District Court, Southern Dist. of N. Y. International Mercantile Marine Company, Complainant, against H. C. Stuart, Acting Collector, etc., et al., Defendants. Final Decree. Kirlin, Woolsey, Campbell, Hickox & Keating, Solicitors for Complainant, 27 William Street, New York, N. Y.

82 United States District Court, Southern District of New York.

In Equity.

E. 25-7.

INTERNATIONAL MERCANTILE MARINE COMPANY, Complainant,  
against

H. C. STUART, Acting Collector of Customs for the Port of New York; Ralph A. Day, Federal Prohibition Director for the State of New York; John D. Appleby, Chief Zone Officer, and William Hayward, United States Attorney for the Southern District of New York, Defendants.

The above-named complainant conceiving itself aggrieved by a decree made and entered on the 31st day of October, 1922, in the above-entitled cause, does hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith and it prays that this appeal may be allowed and that the transcript of record, pleadings and papers upon which the said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

KIRLIN, WOOLSEY, CAMPBELL, HICKOX  
& KEATING, *Solicitors for Complainant.*

The foregoing claim for appeal is allowed.

LEARNED HAND,  
*United States District Judge for  
Southern District of New York.*

83 United States District Court, Southern District of New York.

In Equity.

E. 25-7.

INTERNATIONAL MERCANTILE MARINE COMPANY, Complainant,  
against

H. C. STUART, Acting Collector of Customs for the Port of New York; Ralph A. Day, Federal Prohibition Director for the State of New York; John D. Appleby, Chief Zone Officer, and William Hayward, United States Attorney for the Southern District of New York, Defendants.

The complainant hereby assigns error in the final judgment or decree of the District Court herein, entered on October 31, 1922, in the following respects:

First. The Court erred in dismissing the bill of complaint herein.

Second. The Court erred in denying the petition for an injunction.

Third. The Court erred in holding that the Eighteenth Amendment to the Constitution of the United States prohibits a vessel of the United States from keeping on board while in the territorial waters of the United States intoxicating liquors constituting  
84 part of the customary sea stores of such ship, lawfully acquired by it in a foreign jurisdiction and on board solely for the use and consumption thereof on board said ship outside the jurisdiction of the United States.

Fourth. The Court erred in holding that the National Prohibition Act and the Supplemental Act of November 23, 1921, prohibit a vessel of the United States from keeping on board while in the territorial waters of the United States, intoxicating liquors constituting part of the customary sea stores of such ship lawfully acquired by it in a foreign jurisdiction and on board solely for the lawful use and consumption thereof on board said ship outside the jurisdiction of the United States.

Fifth. The Court erred in holding that the Eighteenth Amendment to the Constitution of the United States, the National Prohibition Act and the Supplemental Act of November 25, 1921, prohibit a vessel of the United States from having on board as sea stores while on the territorial waters of the United States, such intoxicating beverages as are required for passengers as part of their customary rations by the law of the nation to or from whose ports the vessel is trading when said sea stores were lawfully acquired and taken on board for such purpose in a foreign country.

85 Sixth. The Court erred in holding that the keeping on board of complainants' vessel of intoxicating beverages while said vessels are on the territorial waters of the United States in the circumstances mentioned in the third, fourth and fifth assignments of error, constitutes a transportation of the same within the prohibition of the Eighteenth Amendment, the National Prohibition Act and the Supplemental Act of November 23, 1921.

Seventh. The Court erred in holding that possession within the territorial waters of the United States of intoxicating beverages in the circumstances mentioned in the third, fourth and fifth assignments of error is prohibited by the Eighteenth Amendment to the Constitution of the United States, the National Prohibition Act and the Supplemental Act of November 23, 1921.

Eighth. The Court erred in refusing to hold that the interpretation of the National Prohibition Act and the Supplemental Act of November 23, 1921, mentioned in the third, fourth, fifth and seventh assignments of error, was unconstitutional and invalid and not within the powers conferred by Congress by the Constitution.



86 Ninth. The Court erred in holding that a vessel of the United States is territory within the meaning of the Eighteenth Amendment to the Constitution.

Tenth. The Court erred in holding that a vessel of the United States is territory within the meaning of the National Prohibition Act and the Supplemental Act of November 23, 1921.

Eleventh. The Court erred in holding that a vessel of the United States, having on board intoxicating liquors lawfully acquired in foreign ports and constituting part of the customary sea stores of such a ship, could not sell such liquors upon the high seas and in foreign ports.

Twelfth. The Court erred in holding that the National Prohibition Act contains provisions for the prosecution of persons selling on board a vessel of the United States on the high seas, intoxicating liquors lawfully acquire in foreign ports and forming part of the customary sea stores of a vessel of the United States.

Thirteenth. The Court erred in holding that the Eighteenth Amendment to the Constitution of the United States covered vessels of the United States on the high seas or in foreign ports.

Fourteenth. The Court erred in holding that an American vessel at sea or within a foreign port is within the scope of the Eighteenth Amendment, the National Prohibition Act, or the Supplemental Act of November 23, 1921.

87 Fifteenth. The Court erred in holding that the sale on board of complainants' vessels while on the high seas or in foreign ports, of intoxicating liquors lawfully acquired in foreign ports and forming part of the customary sea stores of such vessels, constitutes sale of the same within the prohibition of the Eighteenth Amendment, the National Prohibition Act and the Supplemental Act of November 23, 1921.

Sixteenth. That the National Prohibition Act and the Supplemental Act of November 23, 1921, as construed and applied by the District Court, are unconstitutional and void because enforcement thereof with respect to sea stores on complainants' vessels would deprive the complainants of its property and subject it to penalties without due process of law.

KIRLIN, WOOLSEY, CAMPBELL, HICKOX &  
KEATING,

*Solicitors for Complainant.*



88 District Court of the United States of America for the Southern District of New York, in the Second Circuit.

In Equity.

25-7.

INTERNATIONAL MERCANTILE MARINE COMPANY, Complainant-Appellant,  
against

H. C. STUART, Acting Collector of Customs for the Port of New York; Ralph A. Day, Federal Prohibition Director for the State of New York; John D. Appleby, Chief Zone Officer, and William Hayward, United States Attorney for the Southern District of New York, Defendants, Respondents.

Know all men by these presents, That National Surety Company, a corporation under the laws of the State of New York, with its principal place of business at No. 115 Broadway, in the City, County and State of New York, is held and firmly bound unto the above named H. C. Stuart, Acting Collector of Customs for the Port of New York, Ralph A. Day, Federal Prohibition Director for the State of New York, John D. Appleby, Chief Zone Officer and William Hayward, United States Attorney for the Southern District of New York, in the sum of Two Hundred and Fifty (\$250.00) Dollars, to be paid to the said H. C. Stuart, Acting Collector of Customs for the Port of New York, Ralph A. Day, Federal Prohibition Director for the State of New York, John D. Appleby, Chief Zone Officer and William Hayward, United States Attorney for the Southern District of New York, for the payment of which well and truly to be made, said National Surety Company binds itself, its successors and assigns, firmly by these presents.

Sealed and dated the 31st day of October, 1922.

Whereas, the above named International Mercantile Marine Company, Appellant, has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered and entered  
89 in said cause in the District Court of the United States for the Southern District of New York on the 31st day of October, 1922.

Now, therefore, the condition of this obligation is such, That if the above named International Mercantile Marine Company shall prosecute said appeal to effect, and answer all damages and costs if it fail to make said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

NATIONAL SURETY COMPANY,  
By ROBERT M. NUGENT,  
*Resident Vice President.*

Attest:

N. V. TYNAN,  
*Resident Asst. Secretary.*

90 &amp; 91

National Surety Company.

Capital, \$5,000,000.00.

*Affidavit, Acknowledgment, and Justification by Guarantee or Surety Company.*

STATE OF NEW YORK.

County of New York, ss:

On this 31st day of October one thousand nine hundred and twenty-two before me personally came Robert M. Nugent, known to me to be the Resident Vice-President of the National Surety Company, the corporation described in and which executed the within and foregoing Bond of International Mercantile Marine Company as a surety thereon, and who, being by me duly sworn, did depose and say that he resides in the City of New York, State of New York; that he is the Resident Vice-President of said Company, and knows the corporate seal thereof; that the said National Surety Company is duly and legally incorporated under the laws of the State of New York; that said Company has complied with the provisions of the Act of Congress of August 13th, 1894; that the seal affixed to the within Bond of International Mercantile Marine Company is the corporate seal of said National Surety Company, and was thereto affixed by the order and authority of the Board of Directors of said Company; that he signed his name thereto by like order and authority as Resident Vice-President of said Company; that he is acquainted with N. V. Tynan and knows him to be the Resident Assistant Secretary of said Company; that the signature of said N. V. Tynan subscribed to said Bond is in the genuine handwriting of said N. V. Tynan, and was thereto subscribed by order and authority of said Board of Directors; and in the presence of said deponent; that the assets of said Company, unencumbered and liable to execution exceed its debts and liabilities of every nature whatsoever, by more than the sum of Ten Million (\$10,000,000) Dollars.

That — is the agent to acknowledge service for said Company in the Judicial District wherein this bond is given.

ROBERT M. NUGENT.  
(Deponent's Signature.)

Sworn to, acknowledged before me, and subscribed in my presence this 31st day of October, 1922.

H. E. EMMETT,  
Notary Public.  
(Officer's Signature, description and Seal.)

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[Endorsed.]

The within bond is hereby approved.

LEARNED HAND,  
U. S. D. J.

October 31, 1922.

*Citation on Appeal.*

By the Honorable Learned Hand, one of the United States District Judges for the Southern District of New York, in the Second Circuit, to H. C. Stuart, Acting Collector of Customs for the Port of New York; Ralph A. Day, Federal Prohibition Director for the State of New York; John D. Appleby, Chief Zone Officer, and William Hayward, United States Attorney for the Southern District of New York, Greeting:

You are hereby cited and admonished to be and appear before a United States Supreme Court, to be holden at the City of Washington, District of Columbia on the 6th day of December 1922, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Southern District of New York, wherein International Mercantile Marine Company is complainant and you are defendants, to show cause, if any there be, why the decree in said cause mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 31st day of October, in the year of our Lord One Thousand Nine Hundred and twenty-two, and of the Independence of the United States the One Hundred and Forty-seventh.

## LEARNED HAND,

*United States District Judge for the Southern District  
of New York, in the Second Circuit.*

94 [Endorsed:] E. 25-7. United States Supreme Court. International Mercantile Marine Co. vs. H. C. Stuart, Acting Collector of Customs, etc. et al. Citation. Kirlin, Woolsey, Campbell, Hickox & Keating, Attorney- for complainant, 27 William Street, Borough of Manhattan, City of New York.

95 United States District Court, Southern District of New York.

INTERNATIONAL MERCANTILE MARINE COMPANY, Complainant,  
against

H. C. STUART, Acting Collector of Customs for the Port of New York; Ralph A. Day, Federal Prohibition Director for the State of New York; John D. Appleby, Chief Zone Officer, and William Hayward, United States Attorney for the Southern District of New York.

It is hereby stipulated and agreed by and between the solicitors for the respective parties hereto that the foregoing documents may constitute the record in the above entitled cause, as agreed upon by the parties, to be filed with the Clerk of the Supreme Court of the United States, and that the Clerk of the United States District Court for

the Southern District of New York may certify the same to the Clerk of the Supreme Court of the United States as such record.

Dated, New York, November 9, 1922.

KIRLIN, WOOLSEY, CAMPBELL, HICKOX &  
KEATING,

*Solicitors for Complainant.*

WM. HAYWARD,

*U. S. Atty., Solicitor for Defendants.*

96 United States District Court, Southern District of New York.

E. 25-7.

INTERNATIONAL MERCANTILE MARINE COMPANY, Complainant,  
against

H. C. STUART, Acting Collector of Customs for the Port of New York; Ralph A. Day, Federal Prohibition Director for the State of New York; John D. Appleby, Chief Zone Officer, and William Hayward, United States Attorney for the Southern District of New York.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above entitled matter as agreed upon by the parties.

In testimony whereof I have caused the seal of the said District Court to be hereunto affixed at the City of New York in the Southern District of New York this 9th day of November, in the year of our ord the one thousand *nineteen* hundred and twenty-second and of the Independence of the said United States the one hundred and forty-seventh.

[Seal of District Court of the United States, Southern District of N. Y.]

ALEX GILCHRIST, JR.,  
*Clerk.*

Endorsed on cover: File No. 29,243. S. New York D. C. U. S. Term No. 693. International Mercantile Marine Company, appellant, vs. H. C. Stuart, Acting Collector of Customs for the Port of New York; Ralph A. Day, Federal Prohibition Director for the State of New York; John D. Appleby, Chief Zone Officer, et al. Filed November 10th, 1922. File No. 29,243.

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